Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Reciprocal Compensation for CMRS Providers	)	CC Docket Nos. 96-98, 95-185
	)	WT Docket No. 97-207
	)	

COMMENTS OF WESTERN WIRELESS CORPORATION IN SUPPORT OF PETITION TO REQUIRE COST-BASED RECIPROCAL COMPENSATION FOR CMRS PROVIDERS

Pursuant to the Commission's Notice of May 11, 2000, Western Wireless Corporation. ("Western Wireless"), by its undersigned counsel, hereby submits these Comments in support of the Petition by Sprint Spectrum L.P. seeking an order clarifying the rules governing payment of reciprocal compensation to providers of commercial mobile radio service ("CMRS").

Western Wireless is a leading provider of communications in the western United States. Under the Cellular One national brand name, the company serves more than 700,000 customers in 19 states west of the Mississippi River.

INTRODUCTION AND SUMMARY

Since the promulgation of the *First Local Competition Order*, the Commission has recognized that CMRS providers are entitled to charge reciprocal compensation rates that recover all the additional costs they incur in terminating local traffic originated on other networks.[1] Unfortunately, the framework used to account for these costs is based on the network architecture of landline local exchange carriers ("LECs"). Because of fundamental differences between landline and CMRS

[1] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, ¶ 1041 (rel. Aug. 8, 1996) ("*First Local Competition Order*").

networks, however, landline LECs are not appropriate models for evaluating the costs incurred by CMRS providers. Sprint's Petition seeks the adoption of a model that more accurately reflects the network utilized by CMRS providers, to permit the establishment of reciprocal compensation rates that reflect all the costs that CMRS providers are entitled to recover under the law. Western Wireless agrees that the law requires that reciprocal compensation rates must be based on the actual forward-looking costs of the network that CMRS providers use to terminate traffic. Accordingly, Western Wireless whole-heartedly supports Sprint's Petition.[2]

Western Wireless also recognizes that functionally accurate cost models will take time to develop and implement. Moreover, not all carriers will have the resources, or inclination, to submit the forward-looking economic cost studies necessary to rebut the presumption of symmetry established by the Commission.[3] Therefore, the Commission should reaffirm the applicability of its *existing* reciprocal compensation regulations to CMRS providers. Uniform application of these rules will go a long way toward easing the inequitable effect of a regime that fails to compensate CMRS providers for the actual costs of terminating local traffic.

ARGUMENT

A. The Law Requires That Reciprocal Compensation Rates Recover All the "Traffic Sensitive" Costs of Transporting and Terminating Local Traffic.

Section 251(b)(5) of the Act provides that all LECs have the duty "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." The Commission has determined that CMRS providers are "telecommunications carriers" that provide

[2] While Western Wireless supports Sprint's Petition, Western Wireless does not necessarily advocate adoption of the conceptual cost model in Sprint's April 7, 2000 filing. These comments do not address the merits and/or defects of Sprint's April 7 submission.

[3] *See First Local Competition Order*, ¶1089.

"telecommunications services." *Id.* ¶¶ 1012-15. Accordingly, incumbent LECs must "make interconnection available to ... CMRS providers in conformity with the terms of section 251(c) and 252," *id.* ¶ 1012, and must also pay reciprocal compensation to CMRS providers, *id.* ¶ 1041.

The Commission views "transport and termination ... as two distinct functions." *Id.* ¶ 1039. "Transport" is defined "as the transmission of terminating traffic ... from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party (or equivalent facility provided by a non-incumbent carrier)." *Id.* "Termination" is likewise defined "as the switching of traffic at the terminating carrier's end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party's premises." *Id.* ¶ 1040.

This regulatory gloss is further influenced by the statutory mandate that reciprocal compensation be based on a "reasonable approximation of the *additional costs* of terminating" telecommunications originated on other networks. 47 U.S.C. § 252(d)(2)(A)(ii) (emphasis added). The Commission has determined that legally compensable "additional costs" are the "traffic-sensitive" components of the various network elements necessary for traffic termination. *Id.* ¶ 1057. Determining costs for which LECs must pay reciprocal compensation, therefore, becomes a two-step process of (1) determining which network elements are involved in the "transport and termination" of traffic, and then (2) determining which are traffic sensitive. *See id.* ¶¶ 1056-58

With respect to "transport," the Commission recognized that "[m]any alternative arrangements exist for the provision of transport between [] two networks." *Id.* ¶ 1039. This observation applies to landline LECs and CMRS providers, alike, and the Commission emphasized that "[c]harges for transport ... should reflect the forward-looking cost of the particular provisioning method." *Id.*

A different default rule, drafted with landline LECs in mind, applies for termination. Applying the two-step process identified above, the Commission identified "the end office switch and local loop" as the primary "network elements involved with the termination of traffic." *Id.* ¶ 1057. The Commission then noted that the costs of these network elements "do not vary in proportion to the number of calls terminated over these facilities." *Id.* Accordingly, the Commission concluded that "such non-traffic sensitive costs should not be considered 'additional costs' when a LEC terminates a call that originated on the network of a competing carrier." *Id.* Landline LECs, thus, do not receive reciprocal compensation for costs incurred "after" traffic is switched at a central office onto the local loop.

Unlike landline LECs, however, CMRS providers incur significant, traffic-sensitive costs terminating traffic to end-users, including "air time" – *i.e.*, the cost of transmitting traffic over the scarce spectrum used to complete the last leg of a CMRS call. Unlike the copper local loop, air time is clearly a traffic sensitive cost. The capacity of a given amount of radio spectrum is limited, and expanding capacity (by subdividing cells and reusing frequencies) is expensive. When a given call cell has reached capacity, one user's call can preclude another's. Based on a false comparison between landline and CMRS networks, however, existing reciprocal compensation regimes fail to pay compensation for the traffic sensitive costs CMRS providers incur to terminate traffic.

With the exception of the Hawaii Public Utility Commission, state commissions have not been directly called on to establish asymmetrical reciprocal compensation regimes that reflect the "additional costs" that CMRS providers incur.[4] The California and Washington commissions,

[4] In the Hawaii case, Western Wireless submitted a forward-looking cost study documenting, among other things, the reciprocal compensation payments it was entitled to receive for transporting and terminating traffic originated on the incumbent LEC's network. The commission declined to

however, have been asked to rule on a related issue with respect to the paging industry.[5] The handling of this issue by these state commissions suggests that, absent clarification from the Commission, the states will have difficulty correctly applying the law.

The Washington and California paging cases involved efforts by incumbent LECs to deny payment of any reciprocal compensation to paging carriers. The ILECs' extreme position was rejected, but the paging carriers were only permitted to recover the traffic sensitive portion of the paging terminals, which were characterized as the functional equivalent of switching equipment. The commissions denied the paging carriers' arguments to recover the traffic-sensitive portions of their delivery networks.

Both decisions were based on an erroneous reading of paragraph 1057 of the *First Local Competition Order, supra*, where the Commission ruled that incumbent LECs may not recover loop costs because they are not traffic sensitive. Rather than following the two-step inquiry delineated by ¶ 1057, the California and Washington commissions instead made the *a priori* determination that the call termination side of the paging terminal is the functional equivalent of a wireless loop.[6]

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consider the merits of Western Wireless' submission. It instead awarded Western Wireless traffic transport rates equivalent to the incumbent LEC's tandem rate.

[5] *Petition for Arbitration of an Interconnection Agreement Between AirTouch Paging, and US West Communications, Inc.*, Order Modifying Arbitrator's Report, and Approving Interconnection Agreement with Modifications, Docket No. UT-990300, 1999 Wash. UTC LEXIS 199 (Washington Utilities and Transportation Comm'n) (July 1, 1999) ("*AirTouch Paging*"); *Petition of Cook Telecom, Inc. for Arbitration Pursuant to § 252(b) of the Telecommunications Act of the Rates, Terms and Conditions of Interconnection with Pacific Bell*, Order Denying Rehearing of Decision, Cal. Pub. Util. Comm'n, No. A. 97-02-003, 1997 Cal. PUC LEXIS 993 (California Public Utilities Commission) (Sep. 24, 1997), *aff'd Pacific Bell v. Cook Telecom, Inc.*, 197 F.3d 1236 (9th Cir. 1999) ("*Cook Telecom*").

[6] *AirTouch Paging*, 1999 Wash UTC LEXIS 199 at *16-17; *Cook Telecom*, 1997 Cal. PUC LEXIS 993 at *17-18.

Reciprocal compensation for these traffic termination functions was denied based on this functional equivalence.[7]

Though the Washington commission's observation is true in the grossest, functional sense, it is also irrelevant. As Sprint's Petition explains, "[w]hether a particular wireless network component is similar to a particular wireline network component provides little or no guidance concerning what additional costs a CMRS provider incurs in terminating traffic."[8] The law is plain that "each carrier" is entitled to recover its "additional costs" in call termination. 47 U.S.C. § 252(d). The Commission has assessed the nature of these additional costs for landline LECs. A similar analysis should be undertaken for CMRS networks.

B. The Commission Should Affirm That Its Existing Regulations Apply to CMRS Providers

In the *First Local Competition Order*, the Commission established a default reciprocal compensation regime of "presumptive symmetrical rates based on the incumbent LEC's costs.[9] Under this rule of presumptive symmetry, competitive carriers receive in reciprocal compensation the same per-minute rates that the incumbent charges for terminating the interconnecting carrier's traffic. This rule was adopted for administrative convenience and to relieve new entrants of the burden of preparing their own cost studies. *Id.* ¶ 1088. The Commission expressly recognized, however, that

[7] This error resulted primarily from an incorrect application of 47 C.F.R. § 51.701(d), which defines termination as "the switching of local telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises." Contrary to the states' interpretation, this rule directs nothing more than a common-sense approach to modeling network functionality. It does not provide a basis for making apples and oranges comparisons between disparate networks.

[8] Sprint Petition at 7.

[9] *First Local Competition Order*, ¶ 1089.

some carriers may have higher cost structures, and established a procedure whereby these carriers – including CMRS providers – could petition state commissions to arbitrate claims to establish asymmetrical rate structures. *Id.* ¶ 1089.

In order to obtain the reciprocal compensation regime that Sprint advocates, CMRS providers will need to submit forward-looking economic cost studies to rebut the presumption of symmetry. *Id.* While Western Wireless agrees with Sprint that the Commission's rules entitle CMRS providers to present such studies, not all CMRS providers will have the resources, or inclination, to do so. Therefore, absent the establishment of uniform rates,[10] the Commission should reaffirm the applicability of its *existing* reciprocal compensation regulations to CMRS providers.

Thus, where a CMRS provider does not elect to produce its own forward-looking cost study, it should be entitled to obtain "symmetric" reciprocal compensation rates under section 51.711(a). of the Commission's rules. In particular, if the CMRS provider can demonstrate that its switching centers "serve a geographic area comparable to the area served by the incumbent LEC's tandem switch ... the appropriate [reciprocal compensation] rate is the incumbent LEC's tandem interconnection rate." 47 C.F.R. § 51.711(a)(3). Western Wireless is aware of several arbitrations in which the incumbent LECs have sought to evade the plain language of subsection (a)(3) by seeking to limit the tandem interconnection rate to requesting carriers that operate a "two-tier" switching hierarchy or can otherwise demonstrate that their switches perform "tandem functions." The Commission should clarify that such issues are irrelevant – if the requesting carrier meets the "comparable

[10] The Commission may have the authority to establish such a rate pursuant to its authority under Section 332 of the Communications Act. 47 U.S.C. § 332. States could also be delegated the authority to establish rates in generic proceedings.

geographic area" test of subsection (a)(3), then it is entitled to receive the tandem interconnection rate.[11]

A CMRS provider will, in fact, almost always satisfy the geographic area test. CMRS networks are generally designed around the license areas established by this Commission, which in

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[11] The incumbent LECs have attempted to confuse the issue by blurring together two distinct statements in the *First Local Competition Order*. The relevant statements read as follows:

> We, therefore, conclude that states may establish transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch. In such event, states shall also consider whether new technologies (*e.g.*, fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch. Where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate.

First Local Competition Order, ¶ 1090. The last quoted sentence was adopted, almost verbatim, as section 51.711(a)(3). The preceding two sentences, however, were not incorporated into the regulations; these sentences relate to the general forward-looking cost rule for determining transport and termination rates, § 51.709(a). (The introductory phrase, "In such event," clearly links the second sentence to the first.) There is no indication that they were intended to limit the scope of section 51.711(a)(3). Nonetheless, some incumbent LECs have argued that a requesting carrier must meet *both* a functionality and a geographic test in order to receive the tandem interconnection rate. *See Focal Communications Corporation of Illinois*, Case No. 00-0027, Arbitration Decision at 7 (Ill. Commerce Comm'n May 8, 2000) (finding legal issue moot because requesting carrier met both tests); *see also Petition by Wireless One Network, L.P.*, Order on Motions for Reconsideration, Docket No. 971194-TP, 98 FPSC 4:470, 1998 Fla. PUC LEXIS 917 at *17-18 (Florida Public Service Commission) (April 27, 1998) (finding that cellular carrier was entitled to tandem rate, without regard to geographic area served, because its MTSO was functionally equivalent to a tandem switch).

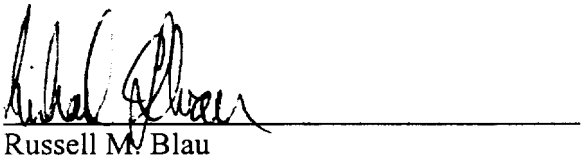
To avoid future controversy over the interpretation of paragraph 1090, the Commission should expressly declare that section 51.711(a)(3) does not require any demonstration of the "functions performed" by the requesting carrier's switch, and that "the incumbent LEC's tandem termination rate" as used in subsection (a)(3) includes all transport and termination rate elements applicable to local calls terminated via the incumbent LEC's tandem.

most (if not all) cases are comparable to or significantly larger than the areas served by most incumbent LEC tandem switches. A CMRS provider typically uses a single centralized switch to serve an entire license area, or a group of contiguous areas. All base stations within an operating region are normally connected to the single, centralized switch, as this is the most efficient means of coordinating and controlling traffic over a cellular-type network. An Order reaffirming the applicability of subsection (a)(3) to CMRS providers will go a long way toward easing the inequitable effect of a regime that fails to compensate CMRS providers for the actual costs of terminating local traffic.

CONCLUSION

For the foregoing reasons, the Commission should approve Sprint's petition and issue an order clarifying (1) that CMRS providers are entitled to all the traffic-sensitive costs associated with terminating local traffic originated on other networks, and (2) that the Commission's existing reciprocal compensation regulations apply with full force and effect to CMRS carriers.

Respectfully submitted,



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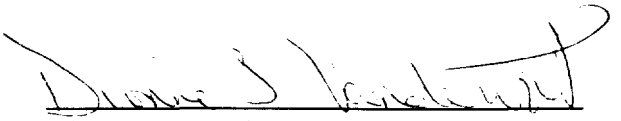
Dated: June 1, 2000

CERTIFICATE OF SERVICE

I, Dionne Vandervort, hereby certify that on June 1, 2000, I caused to be served upon the following individuals the Comments of Western Wireless Corporation in CC Docket Nos. 96-98, 95-185:



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